

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

JUSTIN WAYNE SMITH,

Plaintiff,

v.

**KAUFMAN COUNTY SHERIFF'S
OFFICE, et al.,**

Defendants.

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Civil Action No. **3:10-CV-0703-L**

ORDER


Before the court are the Findings and Recommendation of the United States Magistrate Judge, filed May 10, 2010. Plaintiff timely filed objections.

Plaintiff is proceeding *pro se* and *in forma pauperis*. He brings claims pursuant to 42 U.S.C. § 1983 based upon Defendants' alleged deliberate indifference towards his medical needs that ultimately resulted in the removal of his large intestine. He has brought claims against Defendants Kaufman County Sheriff's Office, Sheriff David A. Byrnes, Dr. William J. Fortner, Captain Lori Compton, and Registered Nurse Cindy Martinez. The magistrate judge recommends dismissing Plaintiff's claims against Defendant Kaufman County Sheriff's Office with prejudice, issuing service of process for the remaining Defendants, and denying Plaintiff's motion for appointment of counsel without prejudice.

Plaintiff objects to the magistrate judge's report and contends that he recommends dismissing the claims against Defendants David A. Byrnes and Lori Compton. The magistrate judge, however, did not recommend dismissing the claims against Byrnes and Compton. He recommended only dismissing the claims against the Kaufman County's Sheriff's Office because it does not have a separate and distinct legal existence. Accordingly, the court **overrules** Plaintiff's objection **as moot**.

Having reviewed the pleadings, file, and record in this case, and the findings and conclusions of the magistrate judge, the court determines that the findings and conclusions are correct. The magistrate judge's findings and conclusions are therefore **accepted** as those of the court. Accordingly, the court **dismisses** Plaintiff's claims against Defendant Kaufman County's Sheriff's Office **with prejudice** as frivolous pursuant to 28 U.S.C. §§ 1915A(b)(1) and 1915(e)(2)(B)(i). The court **denies without prejudice** Plaintiff's Motion to Appoint Counsel, filed April 21, 2010. The court determines that Plaintiff's claims against the other Defendants may proceed and, by separate order, will refer this action to the magistrate judge for pretrial management.

It is so ordered this 18th day of May, 2010.


Sam A. Lindsay
United States District Judge